IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11570 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SATISHCHANDRA KHUSHALBHAI BHAKTA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
MR MENGDEY, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/06/2006

ORAL JUDGMENT

1. The short facts of the case are that the proceedings under the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as

"the Act") were initiated qua the land of the petitioner. There were earlier litigations and the matter was remanded to the Mamlatdar for reconsider mainly on the aspects of examination of the Officer, who issued the certificate for irrigated land. It appears that the Officer was examined, fresh certificate was also produced and thereafter the computation is made for the purpose of declaring the surplus land under the Act and the order came to be passed by the Mamlatdar on 23.9.1992. It appears that the matter was carried before the Deputy Collector in appeal being Appeal No.1/1993 and the appeal ultimately came to be dismissed. It also appears that against the order of the Mamlatdar, the State preferred the revision before the Tribunal and the petitioner herein also preferred the revision before the Tribunal against the order of the Deputy Collector dismissing the appeal. The Tribunal dismissed the revision preferred by the State as well as it also dismissed the revision of the petitioner and confirmed the order of the Mamlatdar. It is

under these circumstances the petitioners have approached this Court by preferring the present petition.

2. Heard Mr.Mehta, learned Counsel for the petitioners and Mr.Mengdey, learned AGP for the State Authorities.

3. The contention raised on behalf of the petitioners is that all the authorities have not properly examined the aspects that the certificate issued of irrigated land is based on the position as prevailing on the date of deposition and not on the basis of the position as prevailing in the year 1976. It has been submitted that for the purpose of computation of surplus land under the Act, it is required to be examined as to which land is an irrigated land when the Act came into force and not on the date when Mamlatdar conducted the proceedings or that the deposition is recorded and, therefore, there is error on the face of the record. Therefore, it has been submitted on behalf of the petitioners that the matter deserves to be remanded to the authority for reconsideration on

the said aspects.

4. Mr.Mengdey, learned AGP has supported the order passed by the authority.

5. It appears that the scope of the jurisdiction of this Court under Article 227 of the Constitution is limited in as much as this Court would not undertake the exercise of re-appreciation of evidence, which has been appreciated by the lower authority. In substance, the contention is that in view of the deposition recorded of the Officer the land could be said as irrigated on the date when the deposition was recorded and not on the date when the Act came into force. The another contention appears to be that on account of the deposition it can be said that the Officer had no personal knowledge about the issuance of the earlier certificate as well as the present certificate. In my view, all such aspects fall in the arena of re-appreciation of evidence, which has been considered by all the three authorities below namely; the Mamlatdar; Deputy Collector; and the Tribunal. Therefore, such an exercise of re-appreciation of evidence

and to take a different view is not called for in exercise of power under Article 227 of the Constitution of India. All the authorities have found that as per the earlier certificate the land was found as irrigated land. As per the latter certificate also, the land is found as irrigated land and the deposition is not appreciated to the extent of disproving the certificate for showing that the land was un-irrigated land. Therefore, such concurrent finding of fact does not deserve to be upset by undertaking the exercise of re-appreciation of evidence. No other contention is raised.

6. In view of the above, the petition fails. Hence, the same is dismissed. Rule discharged. Interim relief stands vacated.

22.6.2006 **(Jayant Patel, J.)**

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